

1 to one.

2 Mr. Skolnik.

3 MR. SKOLNIK: Mr. Chairman, the
4 next precinct is Ward 6, precinct 15. The
5 tally from the State Board of Accounts
6 reflects 79 votes for Mr. Deig, 78 for
7 Ms. McNamara. There are five disputed valid
8 ballots tallied for Mr. Deig, seven disputed
9 valid ballots tallied for Ms. McNamara and
10 there are four no votes.

11 MR. CHAIRMAN: Mr. Brown.

12 MR. BROWN: We have no -- we
13 withdraw all disputes in -- in that precinct.

14 MR. CHAIRMAN: Thank you.

15 Mr. Brooks.

16 MR. BROOKS: We withdraw.

17 MR. CHAIRMAN: Mr. Skolnik.

18 MR. SKOLNIK: Mr. Chairman, the
19 final tally in Ward 6, precinct 15, should
20 reflect 79 votes for Mr. Deig, 78 votes for
21 Ms. McNamara, four no votes.

22 MR. DURNIL: I move to accept the
23 tally as final.

24 MR. CHAIRMAN: Second.

25 All in favor?

1 MR. KUZMAN: Aye.

2 MR. CHAIRMAN: Aye.

3 Motion carries unanimously.

4 MR. SKOLNIK: We next turn our
5 attention to Ward 6, precinct 16. The tally
6 from the State Board of Accounts reflected
7 271 votes for Mr. Deig, 248 votes for
8 Ms. McNamara. There were two disputed valid
9 ballots tallied for Ms. McNamara and there
10 were 13 no votes.

11 MR. CHAIRMAN: Mr. -- excuse me
12 -- Mr. Brown.

13 MR. BROWN: We have no further
14 disputes in that precinct.

15 MR. SKOLNIK: You withdraw
16 your disputes?

17 MR. BROWN: We withdraw whatever
18 disputes we had.

19 MR. CHAIRMAN: And Mr. Brooks
20 didn't have any, right?

21 MR. SKOLNIK: Mr. Brooks, you
22 didn't have any disputes in 6 --

23 MR. BROOKS: Hold on.

24 MR. SKOLNIK: -- Ward 6, precinct
25 16?

1 MR. BROOKS: I'm not -- not quite
2 caught up yet. We're withdrawing before I
3 can get my exhibit list open.

4 MR. BROOKS: That's correct. We
5 have none.

6 MR. CHAIRMAN: Okay.

7 MR. SKOLNIK: Mr. Chairman, the
8 tally in Ward 6, precinct 16 should,
9 therefore, read 271 votes for Mr. Deig, 248
10 votes for Ms. McNamara, 13 no votes.

11 MR. DURNIL: I move we accept the
12 tally as final.

13 MR. CHAIRMAN: Second.

14 All in favor?

15 Aye.

16 MR. KUZMAN: Aye.

17 MR. DURNIL: Aye.

18 MR. CHAIRMAN: Motion carries
19 unanimously.

20 Mr. Skolnik.

21 MR. SKOLNIK: Mr. Chairman, the
22 next ward is Ward -- I'm sorry -- the next
23 precinct is Ward 6, precinct 17. The State
24 Board of Accounts tally reflected 237 votes
25 for Mr. Deig, 205 votes for Ms. McNamara.

1 There was one disputed valid ballot tallied
2 for Mr. Deig, eight disputed valid ballot --
3 valid ballots tallied for Ms. McNamara and
4 ten no votes.

5 MR. CHAIRMAN: Mr. Brown.

6 MR. BROWN: We withdraw all
7 disputes related to that precinct.

8 MR. CHAIRMAN: Thank you.

9 Mr. Brooks.

10 MR. BROOKS: We withdraw.

11 MR. CHAIRMAN: Thank you.

12 Mr. Skolnik.

13 MR. SKOLNIK: Mr. Chairman, the
14 tally in Ward 6, precinct 17, should,
15 therefore, read 237 votes for Mr. Deig, 205
16 votes for Ms. McNamara and ten no votes.

17 MR. DURNIL: I move we count the
18 -- we move the tally as final.

19 MR. CHAIRMAN: Second.

20 All in favor?

21 Aye.

22 MR. KUZMAN: Aye.

23 MR. DURNIL: Aye.

24 MR. CHAIRMAN: Motion carries
25 unanimously.

1 Mr. Skolnik.

2 MR. CHAIRMAN: Mr. Chairman, we
3 now direct our attention to Perry Number 1.
4 The tally in this precinct reflected 231
5 votes for Mr. Deig, 307 for Ms. McNamara, ten
6 no votes. There were no disputed or
7 challenged ballots listed in the State Board
8 of Accounts tally, but I believe Mr. Brown
9 indicated he did have a dispute or challenge
10 in that.

11 MR. CHAIRMAN: Mr. Brown.

12 MR. BROWN: Yes. Thank you,
13 Mr. Chairman and members of the Commission.

14 In this precinct there were -- and I'm
15 sorry -- I'm referring to Exhibit 6, 7 and 8,
16 I believe. 6, 7 and 13. I'm sorry. 6, 7
17 and 13.

18 MR. CHAIRMAN: Okay.

19 MR. BROWN: In this -- in this
20 case we have -- well, I guess I'll
21 distinguish.

22 MR. BROOKS: Adam, if you can
23 hang, let me catch up on the -- 6, 7 and 13?

24 MR. BROWN: Yes.

25 MR. BROOKS: Okay. Thanks.

1 Caught up.

2 MR. BROWN: And, actually, I'll
3 -- now reviewing 7 again, I'll actually take
4 that out of this. That voter simply signed
5 on the wrong line.

6 MR. CHAIRMAN: Okay.

7 MR. BROWN: So I'm sorry.

8 MR. CHAIRMAN: You're taking
9 off --

10 MR. BROWN: We're only looking
11 now at 13 -- I apologize -- 13 and 6.

12 MR. CHAIRMAN: Okay.

13 MR. BROWN: These are two voters
14 that did not sign absentee applications
15 before a vote on -- before an absentee vote
16 at the clerk's office, and we feel these
17 votes should be deemed invalid. They are
18 early votes, so you do have the ability to
19 match up in Vanderburgh County the same way.
20 They're on the same electronic system as
21 Posey, so the same list is kept in the
22 clerk's office. They're electronic machines.
23 And we would ask that these two ballots be
24 invalidated. Thank you.

25 MR. CHAIRMAN: Thank you.

1 Counsel.

2 MR. BROOKS: This is the same
3 procedure they used in Vanderburgh that we
4 went through with Ms. Butler. We can put
5 somebody on the stand, but the bottom line
6 is, they go through the same procedure. They
7 log them in. They photo ID them. And this
8 is one of those unfortunate situations where
9 somebody made the same mistake that they made
10 last time.

11 MR. CHAIRMAN: Anything else?

12 I will say that if I can't get evidence
13 where a signature was compared and a photo ID
14 was tendered, valid photo was tendered and
15 examined, I intend to -- to vote for the
16 Petitioner. So it's up to you whether you
17 want to make the -- the evidentiary case or
18 not.

19 MR. BROOKS: Okay. Susan.

20 MS. KIRK: What's that?

21 MR. BROOKS: Go take the stand.

22 SUSAN KIRK

23 being first duly sworn upon her oath, testified
24 as follows:

25 MR. CHAIRMAN: Counsel.

BY MR. BROOKS:

1 Q The reason I didn't think you were back there
2 is I thought you said you were leaving at 2
3 o'clock. Is it 2 o'clock yet?

4 A Actually, I left at about a-quarter-to-one
5 and didn't get back up here until four. You
6 didn't miss me, did you?

7 Q Here's my question: I'm going to run through
8 what I believe the procedure is for the in-
9 person absentee voting in the clerk's office.

10 A Okay.

11 Q That is, the voter comes in; they sign your
12 log, figure out what precinct it is. Each
13 voter is photo ID'd, checked to make sure
14 that the procedure -- that their -- they have
15 a valid ID. Then somebody at a computer
16 takes that information. That computer person
17 that's sitting away from the front counter
18 and pulls up the registration information and
19 prints the ABS1 information and then
20 theoretically that person generates the ABS1
21 and gives it to the voter to sign and then
22 the voter is moved along to vote. Is that
23 the correct --

24 A Everything, except our staff members have
25 computers at the counter.

1 Q Okay.

2 A That's the -- that's the only difference.

3 Q Okay. So there's no -- I just want to verify
4 for sure there's no question that these
5 people are all photo ID'd before we even get
6 to this ABS process, correct?

7 A Yes, sir. I'd like to say I was listening a
8 while, but Donna and I were talking. Is this
9 an application that's not signed? Is that
10 what you're dealing with?

11 Q Yes.

12 A Okay.

13 Q And --

14 MR. CHAIRMAN: Let's -- let's
15 have the witness look at the documents.

16 MR. BROOKS: Okay.

17 Q I guess my main question simply is, when
18 we've looked through hundreds of these things
19 and there's a scattered few that are not
20 signed and would I be correct in assuming
21 that this is just a random error that somehow
22 the clerk staff in this peculiar situation
23 forgot to have them sign it before they let
24 them vote?

25 A Yes. This -- these two applications were

1 actually done at one of the libraries, and we
2 only have two staff members alone out there
3 and sometimes when things do get busy -- I
4 mean, looking at every one of you, I
5 certainly can't say that I've never made a
6 mistake in my life. Can you? No? You've
7 never made a mistake?

8 MR. BROOKS: Do we have to answer
9 that, Mr. Chairman?

10 MR. CHAIRMAN: We'll ask the
11 questions here.

12 A So, yes, it's a mistake.

13 Q Thank you.

14 A You're welcome.

15 MR. CHAIRMAN: Counsel, questions
16 of the witness?

17 MR. BROWN: None. Thank you.

18 MR. CHAIRMAN: Commissioner's,
19 questions of the witness.

20 BY MR. KUZMAN:

21 Q How do you know this was at the library?

22 A Because it says RB on it, Red Bank.

23 Q Okay. Well, I'm not from Vanderburgh County.
24 I apologize. I'm just checking.

25 A That's okay.

1 Q Is -- is there a -- do you have a log? I
2 didn't hear that. Do you have a log created
3 like this?

4 A Yes. There is a log somewhere. I -- I can't
5 tell you where it is, but, yes. Everybody
6 signs when they vote early even at the
7 library just like you would when you come in.
8 The only difference is you're just signing
9 your name. We don't have it preprinted like
10 a poll book.

11 Q Sure. Is this -- this is not required by
12 law?

13 A I don't know. Brad is the brilliant one.
14 You sign --

15 MR. KING: Mr. Chairman --

16 A -- a poll book, so I -- for me --

17 Q My --

18 A -- whatever.

19 Q -- my --

20 MR. CHAIRMAN: Go ahead.

21 Q My question is, it almost troubles me that we
22 are now creating at the county clerk level in
23 Voter Election Boards in two counties, in
24 Lake -- in Lake and Tippecanoe County, a
25 process to get around voter ID that is not

1 presumed in law. It's not under penalties of
2 perjury because we're using this now to
3 verify somebody's signature that is supposed
4 to be on an absentee ballot.

5 Is there -- where did this come from?
6 Where did these logs come from all of a
7 sudden?

8 A These logs -- I don't -- I can't speak for
9 any other counties --

10 Q Okay.

11 A -- but I've been kind of dealing with these
12 elections since --

13 Q Sure.

14 A -- 1972, and we always felt that it was a
15 good habit to have someone come in, sign
16 their name. Also there's a number beside
17 their --

18 Q Right.

19 A -- name that helped us keep track of the news
20 media wanting to know how many people voted
21 today.

22 Q Absolutely.

23 A It's just -- it's just a little safeguard.
24 It may not be required by law, but
25 Vanderburgh County certainly intends to

1 continue to do it unless the state tells us
2 that we should not.

3 Q Well, I was just interested because we're
4 sort of mixing and matching here with -- I
5 understand mistakes. Mistakes happen. But
6 I'm a little concerned that we're creating
7 another subsystem out there on how to -- how
8 people can vote without statutes or anything
9 to follow them up with.

10 A Well, let's put it this way: If you came in
11 and you did not sign that little poll
12 thing --

13 Q Yeah.

14 A -- but you did sign the application, you
15 would still get to vote.

16 Q I understand that.

17 MR. BROOKS: Mr. Chairman, I
18 guess I'm a little puzzled by why this is
19 subsystem. You don't require the person's
20 driver's license number or their photo ID
21 number on a poll -- poll book, whereas, in
22 these systems they're actually keeping track
23 of that stuff, so there's more on that log
24 than there would be in a poll book, is my
25 only point.

1 MR. KUZMAN: My point was that
2 this wasn't signed. This is what should be
3 signed, not a logbook. That was my point.

4 MR. BROOKS: Well, we all agree
5 with that.

6 MR. KUZMAN: This is an
7 affidavit.

8 MR. BROOKS: Uh-huh.

9 MR. KUZMAN: And we're using
10 logbooks under -- not under affidavit as
11 procedures on how to vote somebody, and I
12 just was concerned that we're -- we're
13 creating something that we shouldn't be
14 creating. That's all I -- and I
15 understand --

16 A And the County Election Board does not use
17 that logbook. We don't use that logbook for
18 anything other than, like I said, to kind of
19 keep track of how many people -- also, when
20 you sign in with this, this voter, RB38 --

21 Q Uh-huh.

22 A -- they're number is there, so that's another
23 way for us to keep track of it in case we had
24 to go back. Say they passed away and we had
25 to go back and take it out --

1 Q Right.

2 A That's our string number right there.

3 Q Right.

4 A So that's -- that's another reason --

5 Q But you use it -- you use it --

6 A -- why they do this.

7 Q -- for nothing else, though.

8 A That's correct.

9 Q Okay.

10 MR. CHAIRMAN: Other questions by
11 Commission members.

12 BY MR. CHAIRMAN:

13 Q I haven't heard any evidence on how you can
14 positively tell us that a photo ID was asked
15 of from those two voters. Do you have
16 anything that you can share?

17 A We don't write down what ID that they produce
18 when they vote early, but these staff members
19 are instructed that when a voter comes in,
20 they must show their photo ID. They're
21 instructed about, you know, when it can be
22 expired, how long, all that type stuff, and
23 if they do not have it, the proper ID, they
24 are to call our office. And thank goodness
25 we don't get too many calls, but most, I

1 would say 99.9 percent of the people who vote
2 early produce a driver's license. We may
3 have someone produce a passport, but 99
4 percent -- 99.9 percent do, so...

5 MR. CHAIRMAN: Go ahead.

6 MR. KUZMAN: I have a follow-up
7 question.

8 BY MR. KUZMAN:

9 Q Were the ID's that were produced here valid?

10 A Yes. My -- my staff would not have taken
11 them if they were not valid. We don't write
12 down what they produced. Okay?

13 BY MR. CHAIRMAN:

14 Q If the Commission was to vote in such a way
15 that these votes shouldn't be counted, how
16 would you be able to find those votes here
17 tonight?

18 A Well, what we would have to, the string
19 number -- that's kind of what we call this --
20 stays there until we get ready to count the
21 votes election night. And what happens is,
22 the votes are tallied and in the meantime,
23 those string numbers go away so that you
24 can't go back and see anything. The only way
25 that we could go back and pull these ballots

1 out would be to have our company come back
2 in. They would have to start from the
3 beginning, reload those flashcards that have
4 the string numbers in them, and they would
5 literally have to start over counting again
6 as far as the absentees go to go back and get
7 those string numbers.

8 MR. CHAIRMAN: Other questions.
9 Hearing none.

10 Thank you very much.

11 THE WITNESS: Thank you.

12 MR. CHAIRMAN: Mr. Brooks,
13 anything else?

14 MR. BROOKS: No. Thank you.

15 MR. CHAIRMAN: Thank you.

16 Questions from Commission members.

17 Discussion and motions.

18 MR. DURNIL: The legislature in
19 its wisdom foresaw these kind of things can
20 happen, there's going to be an occasional
21 mistake by a clerical person and that the
22 person's vote shouldn't be denied because of
23 that. I'll move that these votes remain
24 counted.

25 MR. CHAIRMAN: I'll second for

1 discussion.

2 MR. KUZMAN: If I may, we -- we
3 heard her testify that those logs are used
4 for nothing other than to keep track of
5 votes. We don't know of a -- we don't know
6 of a valid ID. I mean, we had a case today
7 where a clerk -- somebody that worked in the
8 clerk's office took the valid -- took an ID
9 and photocopied it and we now threw the
10 ballot out because it wasn't a valid ID.
11 That voter thought that he or she -- I can't
12 remember -- voted and her vote was cast or
13 his vote was cast. We now have two ballots
14 that aren't signed by anybody and under the
15 statute are supposed to be signed and we're
16 using logbooks to justify the signatures that
17 we don't know if they possessed a photo ID
18 other than the testimony, which I believe,
19 but we don't know if they were valid; we
20 don't -- those -- those books aren't under
21 penalties of perjury, so I'd ask that the
22 motion be denied.

23 MR. BROOKS: I guess I do have
24 one more comment, if -- if you will.

25 MR. CHAIRMAN: Okay.

1 MR. BROOKS: Remember these are
2 applications and they're early. They're in
3 person voting. If there's a problem with --
4 I think we talked about this earlier. If
5 there's a problem with an absentee ballot
6 application, by definition it's done early.
7 The voter deserves notice that there's some
8 flaw, because they've now -- they don't get
9 any notice; they presumably done exactly what
10 they were told to do and the clerk didn't
11 hand it to them and tell them to sign it, but
12 more importantly, had they been notified that
13 there was a flaw, they could have reapplied,
14 fixed it, voted on Election Day or done other
15 matters. There's a process for absentee
16 ballot applications. In my opinion the time
17 to reject an application is at the
18 application time so that the voter can
19 correct it. Once you send out the ballot if
20 it was by mail, then -- then the person
21 should be able to get the vote. And that's
22 why the procedure for challenging absentee
23 ballots is -- is set out by statute and it's
24 before the ballot goes out and in this case
25 would be before the ballot is cast. You've

1 got to give these people a chance to fix a
2 flaw in an application.

3 MR. KUZMAN: I think there's been
4 a party that's been advocating for
5 legislation that would have you inform the
6 voter that there's a mistake and that has not
7 moved forward, and there's no -- there is --
8 the same thing that you can make the argument
9 of the lady that presented or the man that
10 presented the -- the -- the ID picture, why
11 wasn't that person notified that there was a
12 flaw and allowed to correct that error? So
13 -- and we -- we did not allow that vote to be
14 counted.

15 MR. BROOKS: I'm not sure which
16 one you're talking about, but the statute
17 provides for the challenge -- the -- the
18 method by which you would challenge it, and
19 that hasn't -- nothing happened.

20 MR. CHAIRMAN: I've got a
21 question -- a question back to Counsel then.

22 Is that procedure that you're
23 describing in the statute, is that
24 dispositive? Does that mean that -- that we
25 can't overturn that or -- or if the procedure

1 wasn't exercised, are the parties out of luck
2 in -- in terms of problems like this one from
3 -- from deciding those issues?

4 MR. BROOKS: I think what the
5 statute -- and it's 3-11-4-18.5.

6 MR. CHAIRMAN: 3-11- what?

7 MR. BROOKS: Well, let me find
8 the page.

9 MR. KING: Page 276.

10 MR. CHAIRMAN: Page 276. Thank
11 you, Brad.

12 MR. KUZMAN: Thanks, Brad.

13 MR. BROOKS: Did he just tell you
14 the page before I --

15 MR. CHAIRMAN: Yeah.

16 MR. BROOKS: And this -- this
17 tells you when you're receiving an absentee
18 ballot application here's the methods that
19 you can challenge it. And the -- the people
20 -- the Election Board can do it; the clerks
21 that are there, the absentee clerks can do
22 it. But then you've got to fill out an
23 affidavit and there's got to be a vote at
24 that time by the Local Election Board. This
25 is -- this is telling you that if you're

1 going to reject one, you've got to do it and
2 follow a procedure for the very reason,
3 presumably, that I'm saying, that once you
4 send somebody a ballot, they don't have any
5 reason to believe that their application is
6 wrong. Why would you send them a ballot, nor
7 in in-person absentee voting do they have any
8 reason to believe anything is wrong. Once
9 the people send them along to vote, they
10 don't have any reason to believe it's wrong,
11 and that's why the process in this statute is
12 designed, so that if you're going to --
13 basically if you're going to object to an
14 absentee ballot application, it should be
15 done at the time for very fair reasons, to
16 encourage people to get a chance to vote, not
17 wait until after they voted and then try to
18 take their vote away.

19 MR. CHAIRMAN: Thank you.

20 Is there a response to that?

21 MR. BROWN: I guess I'd like to
22 see the statute where the County Election
23 Board actually receives these completed early
24 absentee vote applications. I don't see --
25 this seems to apply to mail-in applications

1 that are received. That's a transaction that
2 happens in front of an election -- an
3 election employee. It's a walk-in
4 transaction. These voters go in; they show
5 their ID; they fill out the application in
6 front of the employee. As Mr. Brooks stated,
7 they walk past two -- you know, a Democrat
8 and a Republican. I mean, there's plenty of
9 issue there with -- I mean, the voter had the
10 chance to get notice that their application
11 wasn't signed. The point is, we don't know
12 that that application was ever showed to
13 anyone. We don't know that this -- I mean --
14 and -- and, Mr. Chairman, just quickly, you
15 said earlier voters have rights and voters
16 have responsibilities, and it's -- it's a
17 simple responsibility to sign an affidavit
18 when you early vote or when you vote by
19 absentee ballot and that's to swear under
20 penalties of perjury you are who you say you
21 are. And we withstand that that deems that
22 you invalidate this ballot -- or these two
23 ballots. Thank you, sir.

24 MR. CHAIRMAN: Mr. Kuzman, do you
25 have something?

1 MR. BROOKS: This is not limited
2 to mail. This -- it -- it talks about
3 receipt of an absentee ballot application.
4 It's obviously received. Here it is in the
5 materials. And if there was going to be --
6 once this -- once you get it, they got it.
7 Whether it happens instantly or over time,
8 there's an obligation to make that challenge
9 then so that the voter has a chance to
10 correct and actually perform their duty in a
11 Democratic society.

12 MR. CHAIRMAN: Thank you.

13 To our counsel, is Mr. Brooks' argument
14 correct? Is that procedure dispositive of --
15 of this issue?

16 MS. BARNES: Mr. Chairman, thank
17 you.

18 Well, I -- I appreciate Mr. Brooks'
19 argument. That's the argument that the
20 Democratic party has made for a long time, is
21 that if a voter's application is -- is
22 defective for some reason that the voter
23 should get notice.

24 As a matter of fact, Delaware County
25 adopted a policy this year to notify absentee

1 voters if their ballot -- if their
2 application was defective, and Mr. King
3 issued a pretty lengthy written opinion that
4 -- that said that that process violated state
5 law and could subject the clerk to
6 prosecution for a felony. So I think there
7 is a process to challenge these absentee
8 applications.

9 MR. CHAIRMAN: Is it dispositive
10 or not?

11 MS. BARNES: No. As I said
12 before, this Recount Commission maintains the
13 statutory authority to review a decision by
14 the County Election Board. That's -- that's
15 what this recount is -- is about.

16 MR. CHAIRMAN: Okay. Thank you.
17 Counsel, anything to add?

18 MR. KING: Mr. Chairman, just
19 briefly, I do agree with Mr. Brooks' analysis
20 that 3-11-4-18.5 applies to all applications.
21 There's nothing on -- in the face of the
22 statute that limits it to applications
23 received by mail.

24 With regard to the jurisdiction of the
25 Commission's to review, I've addressed that

1 earlier to say that the Commission in the
2 past has, in accordance with chapter two of
3 its guidelines, ruled on ballot disputes
4 including absentee ballots based on the
5 information that's before it in a particular
6 matter.

7 MR. CHAIRMAN: Regardless of what
8 we've done in the past, do we have the
9 authority?

10 MR. KING: Yes, in my opinion.

11 MR. CHAIRMAN: Okay.

12 Other questions, discussion from
13 Commissioners.

14 Hearing none.

15 There is a motion --

16 MR. KUZMAN: Yeah.

17 MR. CHAIRMAN: -- that you made?

18 MR. KUZMAN: I made to have these
19 ballots removed, not tallied.

20 MR. CHAIRMAN: Right.

21 MR. DURNIL: I think I -- I made
22 -- I made the motion to count the ballots.

23 MR. CHAIRMAN: Can we go back and
24 look at the record. Which one of us made the
25 motion?

1 THE REPORTER: Which one made the
2 motion?

3 MR. CHAIRMAN: Yeah, that's
4 currently -- I have one Commissioner that
5 says he made the last motion and I have
6 another Commissioner that says he made the
7 motion. Everyone wants credit around here.

8 THE REPORTER: Hang on a second.
9 I just closed the file. I'm going to have to
10 open it back up again. The problem is, I
11 shut down the file. I shut the file off and
12 to get it back to read it, I don't know if I
13 can do that.

14 MR. CHAIRMAN: I'll ask
15 Mr. Kuzman to restate the motion.

16 THE REPORTER: I can -- I can
17 play the tape back.

18 MR. CHAIRMAN: That's all right.

19 MR. KUZMAN: That's all right. I
20 think I made the motion to have --

21 MR. BROOKS: It's sort of like
22 trying to cancel a ballot that's already been
23 cast and nobody knows what it is, very
24 similar to that, actually, for the same
25 reasons.

1 MR. CHAIRMAN: Noted.

2 MR. KUZMAN: I think I made the
3 motion to have these two ballots not counted
4 in this precinct.

5 MR. CHAIRMAN: I second the
6 motion. And before we vote, I would say that
7 I'm going to vote in favor of Mr. Kuzman's
8 motion. I think this case is distinguishable
9 from the one we heard -- a similar issue we
10 had in Posey County earlier. Here again, I
11 see no signature. I see a duty on behalf of
12 the voter, especially when voting absentee,
13 which is a special dispensation, to put under
14 oath the fact that this application is true.

15 Something that makes it different is
16 that he's voting at the clerk's office in
17 person, or she, the voter, which means you
18 don't have to have -- you don't have to cite
19 an absentee voting method as you would by
20 mail; for example, that you intend to be out
21 of the county the entire time the polls are
22 open, that you are -- that you are a voter
23 with disabilities, that you are a voter over
24 the age of 65, et cetera; however, in Posey
25 County we knew that the entire portion -- or,

1 yeah, District 76 covered the entire portion
2 of Posey County. Here that's not the case in
3 Vanderburgh County, we know, and so attesting
4 to the voter's registration address and where
5 they live, et cetera, becomes all that more
6 important. That again is absent here.

7 Also I did not get testimony convincing
8 to me that there was any kind of photo
9 identification produced and determined valid.
10 And that was also different than the Posey
11 County situation that we heard earlier today,
12 so for those reasons I'm voting with
13 Mr. Kuzman.

14 MR. DURNIL: Do we have ballots
15 to look at on the special election?

16 MR. CHAIRMAN: Well, we're going
17 -- we're going to have find -- find those
18 ballots if the motion carries and have them
19 removed.

20 MR. DURNIL: My -- my thought
21 again is that the voter came in to the early
22 voting spot, filled out the application, gave
23 the information and the local folks didn't do
24 what they're supposed to do and they accepted
25 it and let him vote. That's my position, so

1 that's what I'll be voting again for that
2 motion.

3 MR. CHAIRMAN: Okay. All in
4 favor of the motion signify by saying, "Aye."

5 MR. KUZMAN: Aye.

6 MR. CHAIRMAN: Aye.

7 All opposed?

8 MR. DURNIL: Aye.

9 MR. CHAIRMAN: Motion carries two
10 to one.

11 MR. DURNIL: Well, we have two
12 contentious votes that we don't know where
13 they are.

14 MR. CHAIRMAN: Well, one way to
15 resolve that is to see at the end of this
16 recount if -- if -- if one party wins by more
17 than two or not.

18 MR. DURNIL: Okay.

19 MR. CHAIRMAN: And if that would
20 be relevant at that point, we'll -- we'll do
21 a continuance and come back when we know the
22 answer to those votes.

23 MR. CHAIRMAN: Any other -- or
24 any other issues with this precinct?

25 MR. BROWN: No. No further

1 disputes in this precinct. We withdraw --

2 MR. CHAIRMAN: Mr. Brooks.

3 MR. BROOKS: We withdraw ours.

4 MR. CHAIRMAN: Mr. Skolnik.

5 MR. SKOLNIK: Mr. Chairman, I
6 don't know if I'm able -- because there
7 appear to be two votes, unknown votes here, I
8 don't know that I could reflect any changes
9 in the tally at this time --

10 MR. CHAIRMAN: Okay.

11 MR. SKOLNIK: -- in Perry and
12 they would have to remain open.

13 The next precinct is Perry Number 2.
14 The State Board of Accounts tally reflected
15 177 votes for Mr. Deig, 257 for Ms. McNamara.
16 There was one disputed valid ballot tallied
17 for Mr. Deig, one disputed valid ballot
18 tallied for Ms. McNamara and there are seven
19 no votes.

20 MR. CHAIRMAN: Mr. Brown.

21 MR. BROWN: Thank you,
22 Mr. Chairman and members of the commission.

23 I would just like to note for record --
24 no need to distribute this exhibit. Note for
25 the record this is another -- this Exhibit 21

1 was another absentee ballot we believe was
2 opened in violation of state law ten days
3 after the election. Making that note we now
4 withdraw that objection at this time.

5 MR. CHAIRMAN: Objection
6 withdrawn. Thank you.

7 Mr. Brooks.

8 MR. BROOKS: The same argument
9 that I used last time. I believe you guys
10 voted to count those votes.

11 MR. CHAIRMAN: He's -- if I
12 understand right, you're withdrawing, right?

13 MR. BROWN: I made the note for
14 the record and I'm withdrawing our dispute.

15 MR. BROOKS: Well, then I'm going
16 to withdraw my comments to a withdrawn
17 challenge.

18 MR. CHAIRMAN: Your -- your
19 comments are noted.

20 MR. SKOLNIK: Mr. Brooks, you
21 still reflect that there's one disputed
22 ballot cast for Mr. Deig and I didn't know if
23 you wanted to reserve --

24 MR. BROOKS: We withdraw. We
25 withdraw ours.

1 MR. SKOLNIK: Mr. Chairman, all
2 objections or disputed ballots having been
3 withdrawn in Perry Number 2, the final tally
4 consists of 177 votes for Mr. Deig, 257 for
5 Ms. McNamara, seven no votes.

6 MR. DURNIL: I move we accept the
7 tally as final.

8 MR. CHAIRMAN: Second.

9 All in favor?

10 MR. DURNIL: Aye.

11 MR. CHAIRMAN: Aye.

12 All opposed?

13 MR. KUZMAN: Aye.

14 MR. CHAIRMAN: Motion carries two
15 to one.

16 Mr. Skolnik.

17 MR. SKOLNIK: We next turn our
18 attention to Perry Number 3. The State Board
19 of Accounts tally reflected 199 votes for
20 Mr. Deig, 249 for Ms. McNamara -- 249 for
21 Ms. McNamara. There were two disputed valid
22 ballots cast for Mr. Deig, two disputed valid
23 ballots cast for Ms. McNamara and there were
24 five no votes.

25 MR. CHAIRMAN: Mr. Brown.

1 MR. BROWN: Thank you,
2 Mr. Chairman and members of the Commission.

3 The exhibit I'll be referring to is
4 Exhibit 4.

5 MR. CHAIRMAN: 4?

6 MR. BROWN: Exhibit 4, 5 --
7 Exhibit 4 and 5.

8 MR. CHAIRMAN: Exhibit 4 and
9 Exhibit 5.

10 MR. BROWN: And I will just note
11 for the record this is an absentee ballot we
12 believe was opened in violation of state law.
13 We are -- that portion of our objection we'd
14 like -- dispute we'd like to note for the
15 record. We have another dispute on this
16 ballot.

17 MR. CHAIRMAN: So that objection
18 is noted but not pursued?

19 MR. BROWN: Correct.

20 MR. CHAIRMAN: Okay. Then you
21 have another issue?

22 MR. BROWN: Yes. This voter did
23 not sign the absentee application and there
24 is a signature on the -- there is a signature
25 on the privacy envelope, but the voter should

1 not have been issued an absentee ballot
2 without a valid application, not dissimilar
3 from unsigned applications previous. We also
4 have no signature to compare and really don't
5 understand how the ballot was opened because
6 there's nothing in the -- in the record here
7 to compare this voter's signature to any
8 other signature, so we have no way of knowing
9 if this is a valid signature. We would urge
10 you to invalidate this ballot. Thank you.

11 MR. CHAIRMAN: Thank you.

12 Counsel.

13 MR. BROOKS: I'm not -- I don't
14 believe that this was a ballot that was
15 opened after the election, first of all. And
16 this, as far as -- yeah. I don't know that
17 this was opened. Let me -- excuse me.

18 I'm looking through the minutes of the
19 Vanderburgh County meeting that took place on
20 the 12th. This is not a ballot that was, in
21 fact, ruled on -- upon. So this has already
22 been ruled on by the local board, has been
23 opened up and voted, and I'm not sure that
24 this ballot goes with this application, so --

25 MR. CHAIRMAN: Okay.

1 MR. BROOKS: -- I mean, could we
2 -- I think we have to look at the original
3 exhibit to see that. I mean, this is --

4 MR. CHAIRMAN: Let's pull the
5 original exhibits. Here they are. You can
6 just give it to Counsel.

7 MR. BROWN: Mr. Chairman, I
8 request that we make the Commission privy to
9 the conversation here in the inspection by
10 Mr. Brooks and the clerk of an original
11 document that's currently under an impound
12 order. Oh. You have the originals. I'm
13 sorry. My mistake.

14 MR. CHAIRMAN: I appreciate the
15 question.

16 Mr. Brooks.

17 MR. BROOKS: Yeah. I'm going to
18 call the county clerk, please.

19 MR. CHAIRMAN: Call the
20 Vanderburgh Circuit Court Clerk, please. And
21 the Commission can see the originals, please.

22 Ms. Kirk, let me remind you that you're
23 still under oath. Thank you very much. Have
24 a seat.

25 Mr. Brooks, your witness.

1 MR. BROOKS: Can she look at the
2 exhibit or do you want me to hand it to her?

3 MR. CHAIRMAN: Yeah.

4 BY MR. BROOKS:

5 Q Susie, on the -- if you look on the privacy
6 envelope, this indicates that it was -- hang
7 on a second.

8 Let me -- let me ask you, on -- on the
9 12th when you had some provisionals and some
10 absentees that you looked at, in -- when a
11 vote was voted on by the board to be counted,
12 would -- would it have remained with a
13 privacy envelope?

14 A No. If the board decided to count a ballot,
15 we opened up the envelope, took the ballot
16 out, made sure it had the initials on the
17 back and sent it back to be counted.

18 Q So this is a -- if this ballot is attached,
19 it's not been counted yet.

20 A Well, if it was attached -- if we attached it
21 during the meeting. We don't count a ballot;
22 we leave it inside the secrecy envelope. We
23 don't even take it out if we decide not to
24 count it. I don't know what you guys did
25 after you did your thing in this. But if we

1 count a ballot, if we decide to count it, we
2 open it, remove the ballot to be counted. If
3 we deny the ballot, we leave it sealed and we
4 do not open the ballot and it stays inside
5 the envelope.

6 MR. CHAIRMAN: Counsel, you'll
7 have cross if you want to.

8 Q And -- and is it likely that on the privacy
9 envelope where it says received or filed on
10 October 13th -- do you see that, Susie?

11 A Yes, I do see that.

12 Q --- then this would -- that -- if you would
13 have received it then, would that even have
14 gone to the November 12th meeting?

15 A It should. If we had -- we had ballots that
16 were received late, then they would have gone
17 before the board but they would not have been
18 opened or counted.

19 Q Right. But this being received --

20 A This was --

21 Q -- October 13th wouldn't have fallen into the
22 group that went to the November 12th.

23 A That is correct.

24 Q And so is there any rhyme or reason in your
25 mind that we could know that this ballot is

1 associated with these? I mean, obviously the
2 application and this privacy envelope are the
3 same person, but there's no rhyme or reason
4 based on your procedures to think that this
5 ballot should go with these particular
6 privacy envelopes?

7 A This ballot being received late on October
8 the -- I mean received October the 13th, like
9 I said, the only thing I can tell you is, is
10 if we counted it, we separated the ballot
11 from the envelope and counted it. I have no
12 idea why this ballot is still -- or stapled
13 because we wouldn't -- we don't -- we didn't
14 staple anything.

15 Q Well, the ballot --

16 A We didn't do that.

17 Q Go ahead. The ballot says this was either
18 late of provisionals or an overseas, but the
19 privacy envelope indicates that it wouldn't
20 fall into that category because it was
21 received on October 13th. So somehow this
22 ballot got stapled to these privacy envelopes
23 but it's not a ballot that would be -- would
24 have been -- I mean, it's some sort of
25 mistake.

1 Is that fair to say?

2 A Yeah.

3 Q Thank you.

4 MR. CHAIRMAN: Mr. Brown.

5 MR. BROWN:

6 Q Ms. Kirk --

7 MR. BROWN: Well, first of all,
8 I'll note for the Commission that there's a
9 post-it that says it was counted, so the
10 ballot has a post-it on it that says counted.

11 Q Ms. Kirk, on the 12th of November, do you
12 remember after the meeting preserving all
13 materials related to the meeting in a box and
14 requiring that counsel for Bob Deig and
15 counsel for Wendy McNamara sign the -- sign a
16 piece of paper saying we knew what materials
17 were in that box? Do you remember that?

18 A Yes.

19 Q Thank you.

20 MR. BROWN: That's all I have.

21 THE WITNESS: The only thing I
22 see wrong with this is the guy didn't sign
23 the application.

24 MR. BROOKS: Do I need to wait
25 until he's finished for my microphone?

1 MR. CHAIRMAN: Mr. Brown.

2 MR. BROWN: Mr. Chairman, the
3 State Board of Accounts can attest they were
4 with us when we extracted these materials
5 from a box that had a cover sheet which we
6 both signed, both counsel. They -- and --
7 and because we felt there was a defect with
8 the ballots even being opened, we did not ask
9 that the materials be stapled together. They
10 were already like that. We just asked that
11 they be made exhibits together so that this
12 precise issue where there was invalid -- for
13 what we believed -- our original argument was
14 they should never have been opened, but now
15 you have a ballot that was not -- was
16 invalidly executed because the application
17 wasn't signed. It should never have been
18 issued.

19 It's a chain of custody issue.

20 Mr. Brooks was well aware. We -- we both
21 signed that piece of paper. I don't know if
22 the box is still present, but I -- I would
23 think the State Board of Accounts would
24 confirm that we went back and did that that
25 day when we started this recount, so...

1 THE WITNESS: I'm just telling
2 you now -- I'll say it once again -- we had
3 our election board meeting. If we counted
4 the ballot, it was separated; if it was not
5 counted, it was left in there. So somewhere
6 among your group of people --

7 MR. BROWN: I didn't --

8 THE WITNESS: -- someone
9 stapled --

10 MR. BROWN: I didn't --

11 THE WITNESS: -- the ballot --

12 MR. BROWN: I didn't ask a --

13 THE WITNESS: -- to the back of
14 this, so...

15 MR. BROWN: -- question,
16 Mr. Chairman.

17 There's been other ballots today that
18 this board has reviewed that if they want the
19 materials -- and in no case did this counsel
20 or any other person in this room put those
21 ballots together. They were -- the State
22 Board of Accounts will attest these materials
23 were together --

24 MR. CHAIRMAN: Okay.

25 MR. BROWN: -- when we opened the

1 impound.

2 THE WITNESS: I guess a fairy --

3 MR. CHAIRMAN: Thank you.

4 Hold on, Susan, one -- one second.

5 Mr. Brooks --

6 MR. BROOKS: I think what the --

7 MR. CHAIRMAN: -- do you have any
8 more questions of the witness?

9 MR. BROOKS: Maybe, if we go on.
10 There's no sense in having her step down.

11 But there's -- there's one of two
12 things, and I'm not -- and I -- I agree with
13 Adam. I'm not suggesting that somehow this
14 stuff was done at a later date or it wasn't
15 in the box the way it should have been. I'm
16 not suggesting we've got a chain of custody
17 problem. What I am suggesting is, the things
18 that went in those boxes were things that
19 were -- the box that I think Adam is talking
20 about were things that -- were votes that
21 were not counted. So you've got one of two
22 things here. Either this ballot is attached
23 to -- if it's attached to this privacy
24 envelope, then it was not counted. It would
25 have been in the box that Mr. Barry --

1 Mr. Brown -- I've been so good -- Mr. Brown
2 is talking about, but that box was uncounted
3 ballots.

4 The other question, other possibility
5 is that this ballot, during the local board
6 deliberations somehow got this ballot which
7 indicates that it came late attached to a
8 privacy envelope which clearly did not come
9 late. In either event there's no -- no -- no
10 vote to be reduced. If -- if, in fact, it's
11 in the box as Mr. Brown said and it was
12 attached, it was not counted. It -- but more
13 likely it's just inadvertently attached to
14 this privacy envelope because it arrived way
15 early and was not late.

16 MR. CHAIRMAN: Thank you.

17 Questions from Commission members.

18 MR. BROWN: Just five seconds.

19 MR. CHAIRMAN: Yeah. Mr. Kuzman
20 has some questions first.

21 MR. KUZMAN:

22 Q If the -- if this ballot wasn't counted,
23 what's it doing opened?

24 A Beats me.

25 Q Okay.

1 A Because like I said, when we were finished
2 that day, the ballots that we determined not
3 to be counted, the envelopes were not opened.

4 Q Does anybody know whose handwriting that is?

5 A Nor did we write on the ballots.

6 Q Well, it's a -- it's a sticky note. I'm
7 asking the question, do you know whose
8 handwriting this is (indicating)?

9 A No, because it says either late provisional
10 or overseas.

11 Q But it says county.

12 MR. DURNIL: Which county is it?

13 A Sorry. I can't tell you.

14 MR. BROOKS: Well --

15 A I don't know.

16 MR. CHAIRMAN: Okay. Other
17 questions for the witness, Mr. Kuzman?

18 MR. BROOKS: I -- I have one.

19 MR. CHAIRMAN: Hold on. Let me
20 -- Gordie, do you have anything?

21 MR. DURNIL: Yeah.

22 MR. DURNIL:

23 Q If -- if the -- if the ballot was opened, we
24 presume it was counted, right?

25 A If -- if the envelope is opened and there's

1 no ballot attached, it should be in the stack
2 of ballots that we ran through the 650.
3 Being stapled, beats -- I have no idea how
4 that got that way because it was not done
5 during the Election Board meeting.

6 MR. CHAIRMAN: Mr. Kuzman.

7 MR. KUZMAN:

8 Q Was there minutes taken in the Election Board
9 meeting that can trace this back to this
10 ballot and why it's stapled?

11 MR. CHAIRMAN: You're asking the
12 witness?

13 MR. KUZMAN: Yes.

14 A Yes. There are minutes to the Election Board
15 meeting, but as far as this was a stapled
16 ballot, I don't remember anybody ever saying
17 staple a ballot to the envelope. We --
18 that's just not the way we do it.

19 Q I understand.

20 A Okay?

21 Q I just wondered if there was minutes to
22 this --

23 A Those minutes, you have to listen to them,
24 because the minutes that we prepared were
25 done in less time than it took for the

1 meeting to take place because we thought we
2 had to have them back over there like at
3 2 o'clock. So they are unofficial. But this
4 is not -- we just don't do that, so I -- I
5 can't explain to you how that happened.

6 Q Okay.

7 MR. CHAIRMAN: Other questions
8 from Commission members.

9 Hearing none.

10 Apparently Counsel has more questions
11 for the witness.

12 MR. BROOKS: One more.

13 MR. BROOKS:

14 Q On the -- as I read your post-it note, it
15 says late originals, overseas counted. Does
16 counted refer to the process that you're
17 going through as opposed to whether it was
18 added to a vote total? I mean, if it's going
19 through a count, it's -- it's now -- in --
20 into the pile that's to be counted. That
21 doesn't -- does that necessarily mean that
22 the vote is considered valid?

23 A Is this ballot listed on the minutes?

24 Q No.

25 A Okay. Well, we do not write post-it notes

1 counted. We don't do that. We do not do
2 that. We will say this ballot, we voted to
3 count it, and like I said, it is separated.
4 I have no idea where this post-it came from.
5 We do not write counted on a post-it note on
6 a ballot. I'm sorry. Like I said, maybe it
7 was little fairies that came in in the middle
8 of the night. I don't know.

9 MR. ARTHUR: I can answer that
10 post-it note question.

11 MR. CHAIRMAN: Hold on one
12 second. We might have to put you on the
13 record for this. Okay?

14 Any other questions for the clerk?

15 Okay. You're done. Thank you, Susan.

16 THE WITNESS: Thank you.

17 MR. CHAIRMAN: I'm going to call
18 someone from the State Board of Accounts to
19 shed some light on this quickly and then give
20 the parties just two minutes to wrap their
21 arguments up on this -- on this issue.

22 JEFF ARTHUR

23 being first duly sworn upon his oath, testified
24 as follows:

24 MR. CHAIRMAN:

25 Q Can you state your name for the record.

1 A It's Jeff Arthur, State Board of Accounts.

2 Q Jeff, do you want to shed some light on this?

3 A Yes. What happened was, in -- when we were
4 looking through some of the voter material,
5 we found a box that had some ballots and had
6 some other affidavits and envelopes or
7 whatever with that, and so we talked to Susie
8 and --

9 Q The Circuit Court Clerk?

10 A The Circuit Court Clerk, and then we -- I
11 asked her if those were counted ballots. So
12 she kind of went through some of them, and
13 that information was a little bit grouped
14 together, and so we paper clipped what we
15 thought was together. I don't know how the
16 staple got on there. But that was my sticky
17 note that I wrote kind of what I knew about
18 it and if it was counted. And if it was
19 counted, it went to that district or -- well,
20 no matter what it was, we put it with our
21 materials. If it wrote counted on it, on the
22 ballot, on that sticky, then we put it as
23 part of our tally.

24 MR. CHAIRMAN: Okay. Thank you.

25 And who has the original exhibit? Pass

1 that down to him.

2 Q For the record, could you verify that that is
3 your -- your handwriting and if you recognize
4 those materials as being from the box that
5 you described.

6 A Yes. Yes, I do.

7 Q And yes to the sticky again?

8 A Yes. This is my sticky. I just don't know
9 how the staple got on there.

10 Q Okay.

11 MR. CHAIRMAN: Questions to the
12 witness from Commissioners.

13 Hearing none.

14 Questions to the witness from Counsel.

15 Mr. Brown.

16 MR. BROWN:

17 Q Presumably, if this ballot -- we can
18 determine whether this ballot was counted by
19 looking at all the absentee paper ballots in
20 this precinct, and if there's 18 there and
21 one here, your total tally for that precinct
22 was 19 for absentee ballots, that will solve
23 this issue, right, Mr. Arthur?

24 A Yes.

25 MR. BROWN: Thank you.

1 MR. CHAIRMAN: Questions from
2 Counsel.

3 MR. BROOKS: Are you asking do I
4 have any questions --

5 MR. CHAIRMAN: Yes.

6 MR. BROOKS -- or do you want my
7 two minutes?

8 MR. CHAIRMAN: No. Questions of
9 the witness. Excuse me.

10 MR. BROOKS: I don't.

11 MR. CHAIRMAN: Okay.

12 MR. BROWN: Could I just ask --

13 MR. CHAIRMAN: Questions for the
14 witness?

15 MR. BROWN: No. No more
16 questions for the witness.

17 MR. CHAIRMAN: Okay.

18 Thank you.

19 THE WITNESS: Thanks.

20 MR. CHAIRMAN: A two-minute sum
21 up.

22 MR. BROWN: I would just request,
23 if we could, to review the original ballots
24 in that precinct and do a count and it's
25 easily determined whether this ballot was

1 counted. That -- that -- I don't want that
2 to sway the decision of the Commission, so we
3 would ask that it be counted, we take a hard
4 count of the original, please.

5 MR. CHAIRMAN: Counsel, why --
6 why shouldn't that be done?

7 MR. BROOKS: Well, let -- let --
8 let me start by saying, what you heard the
9 clerk say and what you heard Mr. Arthur say
10 is that there is no reason or explanation as
11 to why this envelope is attached to that
12 ballot. So knowing that, the only reason to
13 do anything new to that ballot is if you were
14 certain that it was somehow associated with
15 this particular application which isn't
16 signed. You've now heard the clerk and
17 Mr. Arthur say nobody knows how that thing
18 got stapled there. And -- and what the clerk
19 is telling you is that it wouldn't have been.
20 If that was in the late provisional -- if
21 that ballot was in the late provisionals, it
22 would not be associated with these materials
23 because they were received on October 13th.
24 And you've heard Mr. Arthur say he has no
25 idea who or why these -- the ballot got

1 stapled to these things. And you don't need
2 to recount if you cannot -- if you can
3 conclude that, which I have and I think the
4 clerk has and Mr. Arthur has, that there's no
5 reason that anybody can explain to associate
6 these absentee valid ballot application and
7 privacy envelope with that particular ballot,
8 you don't need to count it. You can say
9 something's wrong with this particular
10 application, but you can't -- if you can't
11 associate it with that ballot, then that's a
12 whole different issue.

13 MR. CHAIRMAN: Okay. Thank you.

14 Questions from commissioners.

15 Discussion.

16 Motions.

17 MR. DURNIL: Because of the
18 uncertainty attached to this exhibit, I would
19 move that we not let this exhibit alter the
20 count or the tally.

21 MR. CHAIRMAN: Second.

22 Discussion.

23 MR. KUZMAN: I would ask that
24 Mr. Brown have a final comment.

25 MR. CHAIRMAN: You're making --

1 you're having Mr. Brown --

2 MR. KUZMAN: No. No.

3 MR. CHAIRMAN: -- make your
4 comment?

5 MR. KUZMAN: No. No. No. No.
6 I -- I saw that Mr. Brown wanted to add
7 something. That's all.

8 MR. CHAIRMAN: I'm trying to sum
9 this up --

10 MR. KUZMAN: Okay.

11 MR. CHAIRMAN: -- with two
12 minutes and two minutes so we're done.

13 MR. KUZMAN: All right.

14 MR. CHAIRMAN: Questions or
15 comments from the Commissioners.

16 MR. KUZMAN: Well, I think that
17 -- I think that Mr. Brown made a request to
18 the -- to count the absentee ballots to see
19 if they're lined up and I would ask that that
20 be done.

21 MR. CHAIRMAN: So you're for or
22 against the motion?

23 MR. KUZMAN: I'm against the
24 motion.

25 MR. CHAIRMAN: Counsel, what does

1 that hurt or help in this matter to -- to
2 open up those ballots? I'm honestly a little
3 bit confused as to what advantage that gives
4 the Commission in terms of determining the
5 truth of this matter.

6 MR. KING: Mr. Chairman and
7 members of the Commission, I think two points
8 to make. One is, you do have a pending
9 motion on the floor which you can deal with
10 procedurally as you think best.

11 Secondly, with regard to request for
12 the admission of the exhibits, it's up to the
13 Commission to put whatever value you place
14 upon them. In past proceedings, you allowed
15 the admission of affidavits but indicated
16 that you would place very little weight in
17 the affidavits under the facts of that case,
18 so I would say it's -- it's in the discretion
19 of the Commission for you to evaluate how
20 useful any evidence presented would be and
21 whether that evidence should be admitted.

22 MR. CHAIRMAN: Thank you.

23 Counsel.

24 MS. BARNES: I think the reason
25 that Counselor Brown was encouraging the

1 Commission to take a look at the remaining
2 mail-in absentee ballots was to determine if
3 this ballot was counted or not. And State
4 Board of Accounts has a total of the number
5 of mail-in absentee ballots that they
6 tabulated during the recount. Looking at the
7 -- the ballots may then allow you to
8 determine whether or not this ballot was
9 counted.

10 MR. CHAIRMAN: Okay.

11 Motion to not allow this particular
12 evidence to alter the State Board of Accounts
13 tally. There's been a second for discussion.

14 All in favor of that motion signify by
15 saying, "Aye."

16 MR. DURNIL: Aye.

17 MR. CHAIRMAN: All opposed?

18 MR. KUZMAN: Aye.

19 MR. CHAIRMAN: Aye. Motion
20 fails. So we're still in the precinct and
21 we're still looking at this stuff.

22 MR. KUZMAN: Is there -- I was
23 just going to ask, is there any minutes that
24 we can look back to and maybe try to piece
25 back how this got put together? That's the

1 question I asked the clerk.

2 MR. BROOKS: I've got the
3 minutes.

4 MR. KUZMAN: Okay.

5 MR. BROOKS: It just doesn't --
6 it's not in here that --

7 MR. CHAIRMAN: There was some --

8 MR. BROOKS: -- that absentee
9 ballot --

10 MR. CHAIRMAN: There was some
11 testimony that that -- the minutes are
12 unofficial. They haven't been --

13 MR. BROOKS: I think -- well, I
14 think she said they did them quickly because
15 we wanted them.

16 MR. CHAIRMAN: That was the
17 testimony. That's what you're talking about?

18 MR. BROOKS: You can -- you can
19 -- you can have a copy if I can have them
20 back and you can look for it. I just don't
21 believe there's a discussion of this
22 situation.

23 MR. CHAIRMAN: Is there an
24 objection?

25 MR. BROWN: No objection to

1 looking at the minutes, Mr. Chairman.

2 Two quick things: One, ballots that
3 have the initials of the Election Board
4 members with a date of 11.12 also don't
5 appear in those minutes. If you want me to
6 go back to my materials and find that, I can.

7 The other thing is, Mr. Arthur did not
8 testify these materials were not together.
9 He did, in fact, testify they were paper
10 clipped. What he didn't know is how they got
11 stapled together. He said they were paper
12 clipped when we retrieved them from the box,
13 and I don't -- and, again, I would request
14 that you simply count the ballots. We have
15 the materials. We've been referencing the
16 original materials all day. I -- I would
17 simply ask that we just count and see if
18 there was no discrepancy from election night
19 through this tally. And I think this can be
20 disposed of fairly quickly with a -- with a
21 count, and I would, again, reiterate that
22 request. Thank you.

23 MR. BROOKS: Mr. Chairman.

24 MR. CHAIRMAN: Mr. Brooks.

25 MR. BROOKS: Can we -- Mr. Arthur

1 did not say that. I'd like to have him back
2 up here and clarify that. He doesn't have
3 any recollection of these particular
4 documents. What he said was that stuff was
5 paper clipped in general but they didn't do
6 any stapling.

7 MR. CHAIRMAN: I thought I asked
8 him if he was familiar with the exhibits that
9 were in front of him and I thought the answer
10 was yes. So we -- we can read --

11 MR. BROOKS: Well --

12 MR. CHAIRMAN: -- let's read the
13 record back.

14 MR. BROOKS: Yeah. Can we just
15 get him back and clarify that, please.

16 MR. CHAIRMAN: I'd like you to go
17 back to Mr. Arthur's record and start reading
18 the testimony.

19 THE REPORTER: It's going to take
20 me a little bit to get to him.

21 MR. CHAIRMAN: It's going to take
22 what?

23 THE REPORTER: Probably five
24 minutes maybe.

25 MR. CHAIRMAN: Oh. I'll call

1 Mr. Arthur back to the stand.

2 Remember, Jeff, you're still under
3 oath.

4 THE WITNESS: Yes.

5 MR. CHAIRMAN: There's been some
6 additional questions that we have that we
7 would want you to clear up.

8 Counsel.

9 MR. BROOKS:

10 Q As I understood your testimony was that
11 things that were together were paper clipped
12 and that you -- is that correct?

13 A Yes.

14 Q And that you, that being the State Board of
15 Accounts, did not staple anything together.

16 A Correct, that I know of --

17 Q Right.

18 A -- personally.

19 Q So -- and do you have a distinct recollection
20 of these three documents being paper clipped
21 together?

22 A I mean, I wouldn't remember the exact
23 documents --

24 Q Well, that's my --

25 A -- that would be attached.

1 Q -- that's my point, is, you -- you could know
2 what was paper -- you knew things were paper
3 clipped, but you can't say that these three
4 documents were paper clipped together,
5 correct?

6 A Not those specific --

7 Q Yeah.

8 A -- documents.

9 Q Thank you.

10 MR. CHAIRMAN: Cross.

11 MR. BROWN:

12 Q Jeff, thank you. But you do remember there
13 was several ballots, affidavits, envelopes
14 paper clipped that were a set, essentially,
15 and that -- so it wasn't numerous affidavits
16 along with numerous ballots; it was one set
17 of materials related to different individuals
18 in different precincts, right?

19 A Correct.

20 Q Okay. And -- and when that box was
21 extracted, we -- we both had watchers, right?

22 A Correct.

23 Q And we asked -- and I made the request at
24 that time those materials be preserved
25 together, distributed out by precinct but

1 preserved together.

2 A I can't remember if it was you --

3 Q Okay.

4 A -- specifically --

5 Q All right. That's okay.

6 A -- but I believe so.

7 MR. BROWN: One other thing,

8 Mr. Chairman.

9 Q Jeff, this is -- I'm going to bring this to
10 you. This is the tally sheet from that day
11 and this is where -- we're speaking of
12 Exhibit Number 5. That's the ballot exhibit.
13 And I'm just going to bring this up and --
14 Exhibit Number 5, will you verify what it
15 says at the -- what that line says as far as
16 the State Board of Accounts tally.

17 A Yeah. It says: Absentee affidavit envelope,
18 invalid ballot.

19 Q Thank you.

20 MR. CHAIRMAN: Do you want to
21 admit that?

22 MR. BROWN: Yeah. Everyone has
23 it in their materials, but I can make it a
24 separate exhibit if you like.

25 MR. CHAIRMAN: What State Board

1 of Accounts exhibit is it?

2 MR. BROWN: It's -- it's their
3 form 6 where they list the exhibits disputed.
4 It's in their tally sheets.

5 MR. CHAIRMAN: Okay. Why don't
6 you give that to Mr. Skolnik.

7 Okay. Any other questions for
8 Mr. Arthur?

9 Hearing none.

10 Thank you.

11 MR. BROOKS: Actually, could I
12 ask a question about this exhibit?

13 MR. CHAIRMAN: Okay.

14 MR. BROOKS: Can you -- can I
15 hand him back the exhibit. I hope I don't
16 get myself -- can I -- can I walk with this
17 thing (indicating)?

18 MR. CHAIRMAN: There's no
19 singing.

20 MR. SKOLNIK: That State Board of
21 Accounts document that -- that he's handing
22 to Mr. Arthur is in the Perry 3 materials
23 that the Commission has been -- been given
24 exhibits.

25 MR. CHAIRMAN: Thank you.

1 MR. SKOLNIK: It's near the end,
2 I'm advised.

3 MR. BROOKS:

4 Q Mr. Arthur, if -- do you have any idea
5 whether these -- Exhibit 5, the affidavit
6 envelope and ballot were stapled together at
7 that time? You don't have a recollection of
8 that, do you?

9 A What's your question again? I'm sorry.

10 Q You listed them together as an absentee --
11 Number 5 --

12 A Okay.

13 Q -- an absentee affidavit/envelope and ballot.
14 And you've told us that you don't have any
15 recollection of stapling anything together,
16 so my question is, are those grouped together
17 because somebody have -- has already stapled
18 them or was there an assertion that that
19 particular ballot went with that affidavit
20 and envelope which caused you to combine
21 those as a single exhibit?

22 Do you understand my question?

23 A Yeah.

24 Q Because, I mean -- let me back up.

25 I mean, there was lots of examples

1 where multiple documents that were not
2 stapled together were considered or asked to
3 be grouped together by one of the parties and
4 you would do that and accommodate the
5 parties. So, for example, if my watcher
6 would have said, I'd like this document, this
7 document and this document all made one
8 exhibit, you could staple them together,
9 right?

10 A That's correct.

11 Q And so do you have a recollection as to
12 whether or not these were stapled together
13 before the making of copies or did they end
14 up getting stapled together because the
15 parties asked -- some party and in particular
16 the -- the Democrat watcher asked that they
17 be grouped together?

18 A I do not know why they were stapled together.

19 MR. CHAIRMAN: Okay.

20 MR. BROOKS: Thank you.

21 MR. CHAIRMAN: Thank you very
22 much. I'm got getting anywhere with this,
23 guys, so I'll entertain any motions.

24 MR. KUZMAN: I'll make a quick
25 motion that I think will be rather -- we can

1 clear this up real quick. But I make a
2 motion that we look to see how many ballots
3 are left in this precinct, absentee ballots
4 to be counted after this one was removed, and
5 if there's 18 -- I think it's 18. I'll --
6 I'll just make the motion to see if -- how
7 many ballots are left, absentee ballots are
8 left in the bag that's in the possession of
9 the State Board of Accounts.

10 MR. CHAIRMAN: Second and
11 discussion.

12 Hearing none.

13 All in favor say, "Aye."

14 MR. KUZMAN: Aye.

15 MR. CHAIRMAN: Aye.

16 All opposed?

17 MR. DURNIL: Aye.

18 MR. CHAIRMAN: Motion carries.

19 MR. BROOKS: Is that a process
20 that the State Board of Accounts is going to
21 do?

22 MR. CHAIRMAN: Yeah. We're going
23 to do it --

24 MR. BROOKS: Okay.

25 MR. CHAIRMAN: -- right now.

1 MR. BROOKS: So I can go take a
2 quick break while they're performing their
3 accounting duties?

4 MR. CHAIRMAN: Hold on a second.
5 I'm going to see how long this is going to
6 take.

7 I'm worried about breaking and
8 having --

9 MR. BROOKS: I'll be back before
10 they --

11 MR. CHAIRMAN: -- a lot of
12 distractions.

13 MR. BROOKS: I'll be back before
14 they find them and count them. Is that okay?

15 MR. CHAIRMAN: Well, you've got
16 Counsel here to cover you.

17 MR. BROOKS: What level of tax
18 bracket are you in? Carry on, Counsel.

19 MR. CHAIRMAN: Okay. Bruce, how
20 much time do you need? Are you ready?

21 MR. HARTMAN: Ready.

22 MR. CHAIRMAN: How much time do
23 you need for this?

24 MR. HARTMAN: Everything should
25 be right here, so not very long.

1 MR. CHAIRMAN: Okay. Well, keep
2 going.

3 (Off the record - State Board of
4 Accounts gathering information)

5 MR. CHAIRMAN: Are you guys
6 ready, Bruce?

7 MR. HARTMAN: I'm ready.

8 MR. CHAIRMAN: You want to come
9 up here with them. What do you think, Bruce?
10 What's the best way, just lay them all out?
11 What do you want do to?

12 Why don't you take the stand and take
13 those with you.

14

15 BRUCE HARTMAN

16 being first duly sworn upon his oath, testified
17 as follows:

18 MR. CHAIRMAN:

19 Q State your name for the record, please.

20 A Bruce Hartman, State Examiner State Board of
21 Accounts.

22 Q Thank you, Bruce.

23 There's been a lot of discussion here
24 about staples and other things. I was
25 wondering if -- we asked that the ballots in

1 question to be counted. I tasked the State
2 Board of Accounts with doing that. Did you
3 come up with a result?

4 A Yes.

5 Q Can you describe your process and the result.

6 A In the -- in the ballot bag that we have
7 which is where all the documentation is -- is
8 put during the -- the recount process, we
9 have pulled out all of the absentee paper
10 ballots or the scanned ballots that were in
11 the precinct box, and I have them sorted by
12 categories in which we -- we laid those out
13 that -- the day of -- of the recount, so how
14 do you want me to describe those to you?

15 We've got 18 valid ballots, three of
16 them have been challenged by one party or the
17 other; we have the ballot that you are
18 debating right now, and you put those
19 together is the 19 valid ballots that we have
20 in our count. We have one other ballot then
21 that is a damaged ballot that did not go into
22 the count. So these are the total ballots
23 that are -- are in the precinct bag. And so
24 there's 20 ballots altogether, but only 19
25 were counted.

1 MR. CHAIRMAN: Mr. Kuzman.

2 MR. KUZMAN:

3 Q And so when you went back to the ballot bag,
4 there were 18 ballots and the 19th was up
5 here that we were talking about.

6 A Correct, sir.

7 Q Thank you.

8 MR. CHAIRMAN: Any questions from
9 Counsel.

10 Hearing none.

11 Commissioners. No?

12 Thank you, Mr. Hartman. Appreciate it.

13 Okay. Motions from Commissioners.

14 Discussion from Commissioners.

15 MR. KUZMAN: I move that this
16 ballot should be eliminated. Not counted, I
17 should say. Sorry. Not counted. Sorry. I
18 want to make a motion that -- okay -- I want
19 to -- I want to make that this ballot is not
20 counted in this precinct.

21 MR. CHAIRMAN: I couldn't hear
22 that.

23 MR. KUZMAN: Oh. I make a motion
24 that this ballot is not counted in this
25 precinct.

1 MR. CHAIRMAN: Okay. Second.

2 Discussion.

3 Hearing none.

4 I'd like to know, Mr. Kuzman, what's --
5 what's your reasoning for that?

6 MR. KUZMAN: Well, I think it's
7 the same as we had last time, the exact same
8 as last time. We don't have a signature;
9 they're not verified; we have no ID. I think
10 it's based on the same motion that was just
11 ruled on in the prior -- the prior precinct,
12 I guess, for lack of a better word.

13 MR. CHAIRMAN: Any other
14 discussion?

15 Hearing none.

16 All in favor of the motion signify by
17 saying, "Aye."

18 You made a motion, did you not, to
19 count the ballot?

20 MR. KUZMAN: Yes. Aye. Aye.

21 MR. CHAIRMAN: Aye.

22 All opposed to the motion?

23 MR. DURNIL: Aye.

24 MR. CHAIRMAN: Motion carries two
25 to one, so we will not count that ballot.

1 Mr. Brown.

2 MR. SKOLNIK: Mr. Chairman, just
3 to clarify, that was a vote for McNamara,
4 correct, in that ballot that we're on?

5 MR. CHAIRMAN: Let's take a look
6 and see.

7 MR. SKOLNIK: After all that
8 discussion, I want to make sure I --

9 MR. DURNIL: It was.

10 MR. SKOLNIK: -- record it
11 correctly.

12 MR. CHAIRMAN: Yeah.

13 MR. SKOLNIK: It was a vote for
14 McNamara?

15 MR. CHAIRMAN: Vote for McNamara
16 and will not be counted.

17 Mr. Brown, anything else there?

18 MR. BROWN: No further disputes
19 in this precinct.

20 MR. CHAIRMAN: Mr. Brooks,
21 anything else there?

22 MR. BROOKS: No.

23 MR. SKOLNIK: Mr. Brooks, in
24 Perry 3 it reflects that there were two valid
25 ballots tallied for Mr. Deig that were

1 disputed. Are you withdrawing?

2 MR. BROOKS: Yeah.

3 MR. SKOLNIK: Okay.

4 MR. CHAIRMAN: Mr. Skolnik.

5 MR. SKOLNIK: Mr. Chairman, based
6 on the action this Commission has taken, I
7 show the final tally in this precinct, which
8 is Perry Number 3, 199 votes for Mr. Deig,
9 248 votes for Ms. McNamara and there were
10 five no votes.

11 MR. KUZMAN: I make a motion to
12 count the tally.

13 MR. CHAIRMAN: Second.

14 MR. DURNIL: I'll move that we
15 accept that tally as final.

16 MR. CHAIRMAN: All in favor?

17 MR. KUZMAN: Aye.

18 MR. DURNIL: Aye.

19 MR. CHAIRMAN: Aye.

20 Motion carries unanimously.

21 And for the record, Mr. Kuzman made the
22 motion.

23 MR. DURNIL: Okay.

24 MR. CHAIRMAN: I would like to
25 suspend for just about 20 minutes while we

1 have some dinner. Dinner is in the back.
2 And we'll convene again just before 8 p.m.
3 local time. Thank you.

4 (Off the record - Dinner break)

5 MR. CHAIRMAN: The Indiana
6 Recount Commission will come to order. We
7 just had finished Vanderburgh County, Perry
8 3, and I'll turn it over to the Recount
9 Director.

10 Brad.

11 MR. SKOLNIK: Thank you,
12 Mr. Chairman.

13 At this time we turn our attention to
14 Perry Number 5. The tally from the State
15 Board of Accounts reflects 226 votes for
16 Mr. Deig, 263 votes for Ms. McNamara. There
17 were 12 disputed valid ballots for Mr. Deig
18 tallied by the State Board of Accounts and
19 there were nine no votes tallied by the State
20 Board of Accounts.

21 MR. CHAIRMAN: So does Mr. Brown
22 have a concern here, dispute?

23 MR. BROWN: If you'll give me
24 just a second. I'm sorry. Mr. Chairman, if
25 you'll give me one second to review

1 something. There's -- there's voters between
2 P5 and P7 related, and the issue was that the
3 voter in P7, there was a husband and wife
4 that used the wrong envelope, and, actually,
5 I have now verified the husband's absentee
6 vote was counted in the correct precinct, so
7 we withdraw any dispute to anything in Perry
8 5.

9 MR. CHAIRMAN: In Perry 5 I show
10 the -- the dispute is withdrawn by
11 Petitioner.

12 Respondent, withdraw?

13 MR. BROOKS: Can I ask a
14 question?

15 MR. CHAIRMAN: Go ahead.

16 MR. BROOKS: Adam, then that's
17 the corresponding objection in 7? Will they
18 both get -- okay. Got it.

19 We withdraw our challenges.

20 MR. CHAIRMAN: Thank you.

21 Mr. Skolnik.

22 MR. SKOLNIK: Mr. Chairman, both
23 parties having withdrawn their dispute --
24 disputed ballots in Perry Number 5, the tally
25 -- the final tally should reflect 226 for

1 Mr. Deig, 263 for Ms. McNamara and nine no
2 votes.

3 MR. DURNIL: I move that we
4 accept the tally as final.

5 MR. CHAIRMAN: Second.

6 All in favor?

7 MR. KUZMAN: Aye.

8 MR. CHAIRMAN: Aye.

9 MR. DURNIL: Aye.

10 MR. CHAIRMAN: Motion carries
11 unanimously.

12 Mr. Skolnik.

13 MR. SKOLNIK: Thank you,
14 Mr. Chairman.

15 We turn our attention now to Perry
16 Number 6. The tally from the State Board of
17 Accounts reflected 224 votes for Mr. Deig,
18 219 for Ms. McNamara, one disputed valid
19 ballot tallied for Mr. Deig and there were
20 eight no votes.

21 MR. CHAIRMAN: Mr. Brown.

22 MR. BROWN: Thank you,
23 Mr. Chairman.

24 Exhibits 7 and 8.

25 MR. CHAIRMAN: Perry 6, Exhibits